IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1937 OF 2006

The State of Maharashtra ..Applicant

Vs.

Mr. Rajendra Dagdulal Kankria ..Respondent

Mr. A.S. Shitole, APP for the applicant-State.

CORAM: B.H. MARLAPALLE, J.

Date : July 18, 2007.

P.C.:

1. This is an application moved by the State seeking leave to appeal against the order of acquittal passed by the learned IInd Ad-hoc Additional Sessions Judge, Pune on 13/4/2004 for the offence punishable under Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Special Case No. 2 of 2000.

2. The prosecution had examined 4 witnesses in support of its case against the accused, the present respondent, who was at the relevant time holding the

post of Principal of Bhartiya Jain Sanghtana Mahavidyalay, Wagholi, Pune. However, the star witnesses of the prosecution case were PW 2 - Pramod Dhiwar and PW 3 - Ramesh Gaikwad. The offending words used by the accused allegedly addressed against the complainant were, "Tumhi Mahar Ahat, Tumhi Mahar Khup Maajlat, Tumhi Magas Varigya Ahat Tar kai Zhale. Ase Magas Vargiya Khup Miltat" on 24/3/1999 when he was called in the cabine of the accused. As per the prosecution case PW 2 Pramod was present in the chamber of the Principal at the relevant time and in his depositions before the trial court he stated that the words/abuses uttered by the accused addressing to the complainant's caste were, "Mahar Kadhi Sudharnar Nahit".

3. Thus, there was total contradiction between the evidence of the complainant and PW 2 Pramod on the main issue of utterances on caste basis. In addition, the incident had admittedly taken place in the office of the Principal. The learned Judge of the trial court held that mere calling someone on his caste would not constitute an offence under Section 3 of the

Act particularly in the absence of proof that the incident was viewed by the public, by reading the provisions of Section 3(1)(x) of the Act. In the case of E. Krishnan Mayanar V/s. M.A. Kuttapan, 1997 Cri.L.J. 2026, the observations made in para 12 were reproduced as under:-

> "Reading of section 3 shows that two kinds of insults against the member of a Scheduled Castes or Scheduled Tribes are made punishable - one as defined under sub-section (ii) and the other as defined under sub-section (x) of the said section. A combined reading of the two sub-sections shows that under sub-section (ii) insult can be caused to a member of the Scheduled Castes or Scheduled Tribes by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood, and to cause such insult, the dumping of excreta etc. need not necessarily be done in the presence of the person insulted and whereas under sub-section (x) insult can be caused to the person

insulted only if he is present in view of the expression "In any place within the public view".

4. Having regards to the reasoning set out by the learned Judge of the trial court in support of the order of acquittal, I am satisfied that the same does not call for reconsiderations by this court and hence the application fails.

5. The application is hereby rejected.

(B.H. Marlapalle,J.)